

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

MARY LOU PETT; KATHLEEN FICK-  
GEE; DIANE BRYCE; PATTI  
DELVALLE; MICHELE HOLCOMB;  
KIM READUS; ALICE REESE; ERIKA  
VAN ALLER; and LINDA WHITE,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

PUBLISHERS CLEARING HOUSE,  
INC.,

Defendant.

Civil Action No. 2:22-CV-11389-DPH-  
EAS

**RESPONSE TO PLAINTIFFS’  
NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Complaint Filed: June 22, 2022  
Complaint Served: June 30, 2022

On March 8, 2023, Plaintiffs Mary Lou Pett (“Pett”), Kathleen Fick-Gee, Diane Bryce, Patti DelValle, Michele Holcomb, Kim Readus, Alice Reese, Erika Van Aller, and Linda White (collectively, “Plaintiffs”) filed in the above-referenced action a Notice of Supplemental Authority, citing to *Briscoe v. NTVB Media Inc.*, Case No. 4:22-cv-10352, ECF No. 41 (E.D. Mich. Mar. 3, 2023) (“*Briscoe*”). Plaintiffs cited this report and recommendation in support of three legal propositions, two of which have no bearing here.

1. First, Plaintiffs cite the report and recommendation in *Briscoe* for the proposition that “PPPA claims are governed by a six-year statute of limitations.

[Dkt. No. 31, ¶ 29(b).] In its Motion to Dismiss, Defendant Publishers Clearing House LLC<sup>1</sup> (“PCH”) did not dispute Plaintiffs’ claim that a six-year statute of limitations applies to their PPPA claims, [*see generally* Dkt. No. 25], and the applicable statute of limitations has no impact on this Court’s decision on PCH’s Motion to dismiss.

2. Second, Plaintiffs cite the report and recommendation in *Briscoe* for the proposition that “Michigan Executive Order 2020-58 and Michigan Supreme Court Administrative Order 2020-3 operate to toll the statute of limitations in the matter for 101 days.” [Dkt. No. 31, ¶ 29(c).] Although PCH reserves its right to contest this claim should Plaintiffs’ complaint survive PCH’s Motion to Dismiss, whether Plaintiffs’ PPPA claims were tolled by Michigan Executive Order 2020-58 and Michigan Supreme Court Administrative Order 2020-3 has no impact on the Court’s order on PCH’s Motion to Dismiss. In its Motion to Dismiss, PCH argued that Plaintiff had not plausibly alleged any violation of the PPPA, regardless of when an alleged violation occurred. [*See generally* Dkt. No. 25.]

3. Finally, Plaintiffs cite the report and recommendation in *Briscoe* because, according to Plaintiffs, “Magistrate Judge Altman expressly declined to follow *Nashel v. New York Times*, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022) and *Wheaton v. Apple Inc.*, 2019 WL 5536214 (N.D. Cal. Oct. 25, 2019), and instead

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<sup>1</sup> Erroneously sued as Publishers Clearing House, Inc.

held that *Horton v. GameStop Corp.*, 380 F. Supp. 3d 679 (W.D. Mich. 2018) and *Piper v. Talbots, Inc.*, 507 F. Supp. 3d 339 (D. Mass. 2020) were ‘more persuasive.’” [Dkt. No. 31, ¶ 2(a) (citing *Briscoe* at PageID.2693-2698).] From this, Plaintiffs conclude that “Magistrate Judge Altman held that the operative complaint in *Briscoe* (which is nearly identical to the operative complaint in this case) stated a claim for relief under the PPPA.” [*Id.*]

4. Plaintiffs’ argument, however, overlooks key factual distinctions between this case and *Briscoe*.

- a. In *Briscoe*, the NextMark screenshot on which the court based its decision to deny the defendant’s motion to dismiss explicitly stated that NextMark was in possession of a list of the Defendant’s *magazine subscribers*. A snip of that screenshot is included below (and the full third amended complaint filed in *Briscoe* is attached hereto as **Exhibit A.**)

## NTVB Media Entertainment Enhanced Masterfile Mailing List

NTVB Media is the leading publisher of TV entertainment and listings magazines, serving more than 3 million readers each day across the U.S. Their magazine subscribers have been merged, deduped, and enhanced with demographic and transactional data to develop the NTVB Enhanced Masterfile of highly sought-after consumers.

[Get Count](#) [Get Pricing](#) [Get More Information](#)

SEGMENTS		COUNTS THROUGH 03/31/2022	POPULARITY: ***** 99
265,588	TOTAL UNIVERSE / BASE RATE	\$110.00/M	MARKET: CONSUMER
40,832	3 MONTH HOTLINE SUBSCRIBERS	+ \$13.00/M	CHANNELS: 
102,458	6 MONTH HOTLINE SUBSCRIBERS	+ \$9.00/M	SOURCE: COMPILED LISTS, DIRECT MAIL SOLD
197,032	12 MONTH HOTLINE SUBSCRIBERS	+ \$5.00/M	PRIVACY: UNKNOWN
119,358	EXPIRES	\$75.00/M	DMA?: YES - MEMBER
	CATALOG RATE	\$80.00/M	STATUS: PREFERRED PROVIDER
	FUNDRAISING RATE	\$75.00/M	GEO: USA
	NON RECIPROCAL SURCHARGE	+ \$25.00/M	GENDER: 62% FEMALE 38% MALE
			SPENDING: \$45.00 AVERAGE ORDER
<b>DESCRIPTION</b> NTVB Media is the leading publisher of TV entertainment and listings magazines, serving more than 3 million readers each day across the U.S. Their magazine subscribers have been merged and deduped, and enhanced with demographic and transactional data to develop the NTVB Enhanced Masterfile of highly sought-after consumers. 			<b>SELECTS</b> 1 MONTH HOTLINE \$17.00/M 12 MONTH HOTLINE \$5.00/M 3 MONTH HOTLINE \$13.00/M 6 MONTH HOTLINE \$9.00/M EPICUREAN/HOBBIES \$18.00/M GENDER SELECT \$12.00/M INCOME RANGE \$15.00/M LIFESTYLE \$18.00/M

[See *Briscoe* Complaint, attached hereto as **Exhibit A**, at Exhibit A.]

- b. Here, in contrast (as PCH argued in its Motion to Dismiss), the NextMark screenshots on which Plaintiffs base their claim here do not state that NextMark is in possession of any information protected by the PPA. Instead, the screenshots state that the lists allegedly in its possession “were generated from PCH’s *various sweepstakes mailings*.” As a result, unlike in *Briscoe*, even if the Court here accepts as true all allegations in the NextMark

screenshots, it still cannot find that Plaintiffs have adequately alleged a violation of the PPPA.

## Publishers Clearing House Magazine Buyers Mailing List

Publishers Clearing House offers promotionally responsive and credit-worthy buyers of magazine subscriptions generated from PCH's various sweepstakes mailings.

[Get Count](#) [Get Pricing](#) [Get More Information](#)

SEGMENTS		COUNTS THROUGH 06/30/2022	POPULARITY: ***** 100
647,541	TOTAL UNIVERSE / BASE RATE	\$100.00/M	MARKET: CONSUMER
7,500	AVG. MONTHLY HOTLINE BUYERS	+ \$15.00/M	CHANNELS: <input type="checkbox"/>
20,000	QUARTERLY HOTLINE BUYERS	+ \$10.00/M	SOURCE: DIRECT MAIL SOLD
5,000	MONTHLY CHANGE OF ADDRESS	+ \$15.00/M	PRIVACY: UNKNWN
<b>DESCRIPTION</b> Publishers Clearing House offers promotionally responsive and credit-worthy buyers of magazine subscriptions generated from PCH's sweepstakes mailings. 100% direct mail sold. These buyers have purchased from over 100 popular titles in a wide variety of interest categories.  Ideal prospects for magazine subscriptions, general merchandise, publishing, fundraising, credit card, home, garden, ethnic, children, family, education, music and book clubs, health and fitness, mature, travel, hobbies, collectibles, and sports offers.			DMA?: YES - MEMBER
			STATUS: PREFERRED PROVIDER
			GEO: USA
			GENDER: 70% FEMALE 30% MALE
			<b>SELECTS</b>
			1 - \$20 \$10.00/M
			KEYING \$2.00/M
			MULTI-BUYERS/NEW TO \$10.00/M
			FILE \$20.00/M
			OVER \$20 \$10.00/M
			PAID \$10.00/M
			RUNNING CHARGES \$5.00/M
			STATE/SCF/GENDER \$10.00/M
			SUBSCRIPTION \$10.00/M
			CATEGORIES

[Dkt. No. 22-3.]

## Publishers Clearing House Book, Music & Video Buyers Mailing List


These buyers of books, videos, or music are generated from PCH's sweepstakes mailings.

[Get Count](#) [Get Pricing](#) [Get More Information](#)

SEGMENTS		COUNTS THROUGH 06/30/2022	POPULARITY: ***** 98
1,429,511	TOTAL UNIVERSE / BASE RATE	\$100.00/M	MARKET: CONSUMER
	BOOK/VIDEO/MUSIC BUYERS	+ \$10.00/M	CHANNELS: <input type="checkbox"/>
150,611	AVG. MONTHLY HOTLINE	+ \$15.00/M	SOURCE: DIRECT MAIL SOLD
313,209	AVG. QUARTERLY HOTLINE	+ \$10.00/M	PRIVACY: UNKNWN
<b>DESCRIPTION</b> Publishers Clearing House offers promotionally responsive and credit-worthy buyers of quality merchandise at affordable prices. These buyers are generated from PCH's various sweepstakes mailings. These consumers are music, book & video enthusiasts and spend their discretionary income on a variety of merchandise for their entertainment and enjoyment. They are ideal prospects for a variety of offers including: books, music, video, general merchandise, credit card, fundraising, insurance, membership and club continuity offers.			DMA?: YES - MEMBER
			STATUS: PREFERRED PROVIDER
			GEO: USA
			GENDER: 70% FEMALE 30% MALE
			<b>SELECTS</b>
			ADD'L SELECTS
			KEYING \$2.00/M
			MULTI-BUYERS/NEW TO \$10.00/M
			FILE \$10.00/M
			PROFILE/DEMOGRAPHICS \$10.00/M
			RUNNING CHARGES \$5.00/M
			STATE/SCF/GENDER \$10.00/M
			ZIP \$3.00/M
			ZIP +4

[Dkt. No. 22-3.]

- c. Additionally, the screenshot at issue in *Briscoe* made clear that *if* information was disclosed by the defendant, as the plaintiffs’ alleged, that information necessary included the specific magazine subscribed to. [See *Briscoe* Complaint, attached hereto as Exhibit A, at Exhibit A (screenshot stating that the defendant’s “*magazine subscribers* have been merged, deduped, and enhanced with demographic and transactional data to develop the NTCB Enhanced Masterfile of highly sought-after customers” (emphasis added).].
- d. In contrast, the screenshot here states, at best, that PCH may have disclosed, at some point in time, information from sweepstakes mailings or products from PCH.




**Publishers  
Clearing  
House**

[Home](#)
[About PCH Data](#)
[Datacards](#)

## About Publishers Clearing House Data

### PCH Facts



- Average Monthly HL: 733,500
- 85+ Continuation Mailers
- 4 Million+ Buyers
- 3:1 Continuation Ratio

*Publishers Clearing House*, founded in 1953, is a multi-channel direct marketing company that offers discounted magazine subscriptions and general merchandise to consumers with the chance to enter and win one of their many ongoing sweepstakes. PCH is headquartered in Port Washington, NY – the same town where the founder, Harold Mertz, started the company in his garage.

Visit *Publishers Clearing House* online at: [pch.com](http://pch.com)

#### PCH Customer Profile

Average order \$30  
average age - 65  
average income \$55,000  
70% female and 30% male  
most are married, educated, and home owners.

#### Subscription Categories Include:

Fashion  
Business/Financial  
Computer/Electronics  
Entertainment  
Ethnic  
Food/Cooking  
Games/Contests  
Fitness  
Hobbies  
Home/Garden  
Kids/Education  
Mature  
Men's Interest  
Nature  
News  
Outdoors/Sports  
Pets  
Religious  
Travel

#### PCH Buyers Masterfile

Update Schedule: Monthly  
100% direct mail sold

#### Product Categories Include:

Book/Video/Music  
Children's; Collectibles  
Cooking; Food Gifts  
Healthcare; Holiday  
Household  
Jewelry/Beauty/Fashion  
Gardening/Outdoors  
Religious  
Auto  
Sports  
Pets  
Domestics  
Home Décor  
Everything for Your Home

#### Selects Available:

Product/Subscription Category  
New to File  
Multibuyers  
Dollar (under \$20; \$20+; \$30+; \$40+)  
Paid  
COAs

## Contact LSC

Get in touch with List Services Corporation to find out about utilizing *Publishers Clearing House* data for your next marketing campaign!

**John Brady**  
Assistant Vice President  
203-791-4191  
[jbrady@listservices.com](mailto:jbrady@listservices.com)

**Isabel Figueiredo**  
Sales Coordinator  
203-791-4475  
[isabel@listservices.com](mailto:isabel@listservices.com)

**Matt Potts**  
Enhanced Sales Director  
203-791-4440  
[mpotts@listservices.com](mailto:mpotts@listservices.com)

If you would like to make list or alternative media recommendations on any of your managed properties to PCH, please contact:

**Virginia Benoit**  
SVP, Brokerage Sales  
203-791-4424  
[ybenoit@listservices.com](mailto:ybenoit@listservices.com)

[Dkt. No. 22-5.]

5. At bottom, while the court in *Briscoe* may have found that *Horton*, 380 F. Supp. 3d 679, and *Piper*, 507 F. Supp. 3d 339, were “more persuasive” than *Nashel*, 2022 WL 677565, and *Wheaton*, 2019 WL 5536214, it did so under facts that are very different than the facts presented here. This court should follow *Nashel* and *Wheaton* and dismiss Plaintiffs’ complaint for failure to state a claim.

Respectfully submitted,

Dated: March 10, 2023

By: s/ Matthew D. Pearson

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*Attorneys for Defendant*  
PUBLISHERS CLEARING HOUSE, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2023, I caused to be electronically filed the foregoing **RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY** using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Matthew D. Pearson

Matthew D. Pearson